

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICHARD S. BURGESS,

Plaintiff,

v.

VANCOUVER POLICE
DEPARTMENT, et al.,

Defendants.

CASE NO. C15-5844 BHS-DWC

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable David W. Christel, United States Magistrate Judge (Dkt. 57), and Defendants City of Vancouver, Dennis Devlin, Adam Mallard, Rodrigo Osorio, Vancouver Police Department’s (“Defendants”) objections to the R&R (Dkt. 58).

On August 11, 2016, Judge Christel issued the R&R recommending that the Court grant Plaintiff Richard Burgess’s (“Burgess”) motion to dismiss, dismiss Burgess’s claims without prejudice, and deny all pending motions, including Defendants’ motion for summary judgment, as moot. Dkt. 57. On August 22, 2016, Defendants objected arguing that the Court should either dismiss Burgess’s claims with prejudice or rule on Defendants’ motion for summary judgment. Dkt. 58.

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or

1 modify the recommended disposition; receive further evidence; or return the matter to the
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 In this case, Defendants have failed to show that dismissal with prejudice or
4 summary judgment is warranted. For example, if Burgess files his claims again,
5 Defendants' answer and motion for summary judgment have already been drafted, saving
6 Defendants valuable time in litigating these claims a hypothetical second time.
7 Moreover, based on Defendants' motion, Burgess is informed as to what law was and
8 was not clearly established at the time of his arrest. Filing his claims while possessing
9 such knowledge lends more support to Defendants' argument that Burgess's claims are
10 frivolous and should count as a "strike" under 28 U.S.C. § 1915(g). Therefore, the Court
11 having considered the R&R, Defendants' objections, and the remaining record, does
12 hereby find and order as follows:

- 13 (1) The R&R is **ADOPTED**;
- 14 (2) Burgess's motion to dismiss is **GRANTED**;
- 15 (3) All other pending motions are **DENIED as moot**; and
- 16 (4) This action is **DISMISSED**.

17 Dated this 31st day of August, 2016.

18
19 

20 BENJAMIN H. SETTLE
21 United States District Judge
22